G. R. S. IX-5]

Previous references. 1888-89 192 (L.R)

File No. 58-88

Serial Nos. 1 – 24

Later references.

GENERAL AND REVENUE SECRETARIAT

(1) K.C.E

Serial Nos. 1 – 24

Part B for May 1888

SUBJECT.

Waddu Water dispute between Ramiengar Heggadadevankote & Anantachar Nagna

Received

Govt Por

Read letter from the Dy Comr of ~~Hangalore~~ Mysore dated 10th March 1894 No 1000.

—

In Her order dated 20th June 1867 No 1946, Govt decided that water should be supplied to fields Nos 14, 15, & 28 from the Vudr constructed by Rangayyagar as it was provided that ~~he~~ by constructing the Vudr Rangayyagar obstructed ~~not~~ the supply of water to the fields above named by an old channel which had existed. Subsequently, Anantachar, the Ryot of No 15 brought up a suit against Rangayyagar

In the release of Halehonda Heggadevan Ryot Talcy

for damages caused by the obstruction during 1885, 1886 & 1887 & obtained a Decree in her favour. In the Decree, the Interpreter who went into the case thoroughly held that there was an old channel which Rangayyan blocked up by the Weir. The Decree was confirmed in appeal in 1891.

In 1888, Rangayyar presented a Petition to Govt stating that Annadorai the holder of no 15 had other sources of supply of water, but instead of utilizing that supply, insisted through spite, upon taking water from her Well. On this Govt remarked that if such sources existed

the Govt have a
right to restrict Hers
(holders of Nos 14, 15
& 28) to it, as the
whole right of regulating
the distribution of water
rests in Revenue
officers" & directed
the Dy Govt to ~~report~~
make the most satisfy
distribution possible
so as to ensure to
every Govt land a water
supply not inferior to
what it now enjoys, if
Rangaraya's representation
be true — & to report the
damage Govt in view to
the orders passed in 1887
being modified. — In
1892 the Dy Govt reported
that Rangaraya failed
to substantiate his statements,
& that there was not any
other source of supply
available to Nos 14, 15 & 28 —
& the Report was

simply ~~filed~~ ordered
to be filed — ~
Rangapayan agreement
published in the Gazette
under 1892 and petition
was referred to the Dy
Conservator, & the
letter recd above is
in reply. —

The Dy Conservator
now states that from
his enquiries & inspection
of the land, it does not
appear that Rangappa
obstructed any permanent
channel which led water
to No 15, but that he
merely raised by bunds &
obstructed an indifferent
supply of water which
No 15 used to receive
from the lands above,
sufficient only to irrigate
7 or 8 Kolagas, but
that the whole members the
area of which is 1 & 26 gantas,
& that under these

circumstances, it would be hard to compel Rangayyan to maintain the Wadda entirely at his cost & supply water to the whole area of no 15 — Hence he is prepared to take up Rangayangai Wadda & maintain it & regulate the supply of water to all lands under it, levying the cost of maintenance from all the owners of lands benefited thereby — If so agreed to, then, I recommend that Rangayyal should be called upon to supply water to the 15 ~~and~~ & irrigate 35 ~~40~~ Ks of an acre. He does not think that there is any other source of supply possible —

Gore are not
disposed to re-open
the question as to
the right of water which
the holder of No 13 has
from the Waiohi — ~~The~~
I do not agree that the
Civil Courts have held
that the holder of No 15
has right to water
from the Waiohi to irrigate
the whole number. It
there is nothing to show
that there are other sources
of supply which the
holder of No 15 could
utilize — Under
these circumstances
Rangatapu's ~~Petition~~
Petitions will be finally
dismissed — & the
~~order of 10th April~~
is

he will be informed
as directed in the last
order of 1887 that
"he must ~~the~~ always so
maintain & use the
Weir as not to
demand a full
supply to Lands No 14,
15 & 28 & that any
failure on his
part in the respect
will necessitate
it removal the
Weir" ~~& he not~~

[signature]
13/12/94

Send the Dy
Comrs letter
W. Chentral
Rail's proposed
order and the
chief Justice
with Suit Docts
and ask him
whose the lands
in dispute (which
please specify
by numbers
on plan) is
kindly instruct
Dyster Sweeny
and submit
a report as to
the best way
of arriving
at the lands
with the least
friction between
the occupants by
their numbers.
His opinion as to
the advisability
of taking up
the Order altogether
& maintaining
it as for as any

Minutes to be solicited
30/5/95

To Robin Thomb

This is a second
Suit between the parties
still pending & undetermined
Either Upon the Demurrer
or upon the Merits
If Mr Thomb
wants to bring the appeal
demanded the case be
Lodged. Mem ascertain
from the Col. If this
is so I m' avoid Deciding
this Question on the Pleadings
The file may be sent to
the Lieut

CJ
17/1/95

Sent to the Lieut
with a Copy of the Judgment
of the Chief Court referred to.
CJ

Petition No 15-5-5 of 88-89.

Petitioner

Ranjiengar

Counter Petitioner

Anantachar.

Dispute regarding irrigation of Counter Petitioner's land from the Road constructed by the Petitioner

—

List of papers

(1) to (13) Vide Separate list attached.

(14) Copy of Govt Resp of 20th November 87.

(15) Village map.

(16) Printed Copy of the proceedings of the suit of 88.

(17) Judgment of the Chief Court in Second appeal No 124 of 1890

(18) do 67 of 93-94

(19) ~~Draft~~ Order proposed (Copy)

(20) ~~Copy~~ do (original)

5/3/96

because this
person is very
ambivalent
about

5/3/96

Chief Engr's no 1532 dt 15/3/95.

This draft order & other papers were forwarded to the Chief Engr for opinion as to the best mode of irrigating the Srvs 14, 15 & 28 & as to the advisability of taking up the old dr & maintaining it by Govt Agency.

In letter no 131 dt 2/2/96, the Chief Engr expressed his concurrence in the view of the Ex Engr (Mr Kaye) that the best way of irrigating S no 15 was to lower the level of the land by 5" on an average in which case it would receive the surplus water of S no 14 (The cost of lowering the level was estimated to be Rs 125). Nothing was said about the advisability of maintaining the dr by Govt Agency. The parties seem to have been heard on the 5th March 1896

As the matter was understood to have gone before the civil Courts, the result had to be ascertained. In Kew Jogiwal's 1/11/97 in 2nd appeal No 37 of 1896-97 the Chief Court in upholding the award of damages to ~~the~~ Anantacharya ~~dependent~~ on account of the obstruction to the flow of water to Anantacharya's land Survey No 15. Have held (1) that the right of Anantacharya to the water in res. jurisdicta & (2) that it was unnecessary for them to consider whether Rungiengar was bound to keep the oddi & that it was sufficient to say that Rungiengar could not be allowed to cut off the supply of water from Survey No 15

The Chief Engr who was requested to report on the 2nd of the two points referred to him, reports that the oddi is too distant to be materially concerned & that the work maintaining it is not necessary. The Chief Engr's letter & the accompanying letters show that the present Ex Engr Lt Mahadevaiah

takes a different view from
Mr Kaine's as to the best
mode of irrigating S no 15
Mr Mahadeva Sastry thinks
that S no 15 can be irrigated
from the channel now irrigating
S no 28 (which is different from
the oddi) & that Sastry the
Rungappa is willing to
provide the necessary facilities
but that Anantachar is
so perverse as to insist on
his land being irrigated by
the "oddi" & not by the
channel aforementioned.
The Sheristadar thinks that
Anantachar's objections are
unreasonable & long as
the pipe laid by Rungappa
is of sufficient size to irrigate
S no 15. This of course
leaves the question as to
whether S no 15 is irrigable
from other source than the oddi
The D Com^r & the former Ex Sup^t

answered the question in the
negative while the present Ex Eng.
is with us the appellant answer
the question in the affirmative
~~The decision~~ There is however nothing
in the decision of the Chief Court
to prevent a reconsideration
this question if so long after as
September 1898, the Devan remarks
on Rungiyar's revenue [different]
"that if such source exists Govt
have a right to restrict him (Ananthachar)
to it as the whole right of regulating
the distribution of water rests in
revenue officers".
= When the parties were heard
in March 1896, the information
now available was not before

I am inclined
to agree with
the Treasurer of
Mysore - I
would upon
Rungiyar's
forcing a hire
of four inches
& ~~declining~~
channel
to consider
Govt's Ananthachar
should limit
their arrangement
as long as
Govt's
adequate supply
as soon as this
arrangement is completed &
comes into force
Ananthachar
will no further
right to interfere
with the supply
of Rungiyar -
The Dist Commissioner
in consultation
with the Executive
Engineer should
report the working
of this arrangement
after 3 years

Sir W. Wallace
2nd Counsel
29/3/98

R 6.30 P.M.
29.3.97.

W 27-4-98
R 27-4-98
Off. Gut put up
Bbay
29/4

Moc 2 cards
W 26/4/98

Sir W. Wallace
2nd Counsel
27/4/98

LR 58-88-1 (1)

ಸಂಪಾದಿಸಿದೆ. ಇದು ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅಧ್ಯಯನಕ್ಕೆ ಅತ್ಯಂತ ಉಪಯುಕ್ತವಾಗಿದೆ. ಇದರಲ್ಲಿ ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅನೇಕ ಪ್ರಸಿದ್ಧ ಕವಿಗಳ ಜೀವನ ಚರಿತ್ರೆಗಳು ಮತ್ತು ಅವರ ಕೃತಿಗಳ ವಿಮರ್ಶೆಗಳು ಇವೆ. ಇದರಲ್ಲಿ ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅನೇಕ ಪ್ರಸಿದ್ಧ ಕವಿಗಳ ಜೀವನ ಚರಿತ್ರೆಗಳು ಮತ್ತು ಅವರ ಕೃತಿಗಳ ವಿಮರ್ಶೆಗಳು ಇವೆ. ಇದರಲ್ಲಿ ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅನೇಕ ಪ್ರಸಿದ್ಧ ಕವಿಗಳ ಜೀವನ ಚರಿತ್ರೆಗಳು ಮತ್ತು ಅವರ ಕೃತಿಗಳ ವಿಮರ್ಶೆಗಳು ಇವೆ.

ಈ ಪುಸ್ತಕವನ್ನು ಸಂಪಾದಿಸಿದೆ. ಇದು ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅಧ್ಯಯನಕ್ಕೆ ಅತ್ಯಂತ ಉಪಯುಕ್ತವಾಗಿದೆ. ಇದರಲ್ಲಿ ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅನೇಕ ಪ್ರಸಿದ್ಧ ಕವಿಗಳ ಜೀವನ ಚರಿತ್ರೆಗಳು ಮತ್ತು ಅವರ ಕೃತಿಗಳ ವಿಮರ್ಶೆಗಳು ಇವೆ. ಇದರಲ್ಲಿ ಸಂಸ್ಕೃತ ಮತ್ತು ಕನ್ನಡ ಸಾಹಿತ್ಯಗಳ ಅನೇಕ ಪ್ರಸಿದ್ಧ ಕವಿಗಳ ಜೀವನ ಚರಿತ್ರೆಗಳು ಮತ್ತು ಅವರ ಕೃತಿಗಳ ವಿಮರ್ಶೆಗಳು ಇವೆ.

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Order

The order No 1943 of 20 Nov 1967
were ~~—~~ in accordance with strict
rights & based upon the facts proved.
~~The~~ Petr now applies for a review of
those orders and alleges that ~~—~~ admissions
made by Counter Petrs ~~&~~ Channael Dept
W. show that they then acquiesced in
the Petrs "Oodi" & recognized that they
had a ~~source~~ of water ~~supply~~ different
from this "Oodi" & Petr relies upon the
Evidence he can produce the right
does a Copis of them & ~~—~~ then seek
a Review.

But apart from the question of right
Petr represents ~~&~~ that the Counter Petrs
out of State refuse to take water from
another Equally ~~good~~ source which
head authorities point ~~to~~ out. If
such source exists, the Govt have a
right ~~to~~ restrict them to it, as the
whole right of regulating & distributing
of water Vests in Revenue Officers. If Petrs
present Representation upon this ~~—~~ is true, the Defendants

No. 337 (2)

Mysore Dewan's Office.

PETITION DEPARTMENT.

icial Memorandum.

LR 5888-2

The accompanying Petition No. 1555, dated 21st September 1888 received at the Dewan's Office from Ranga Iyengar of Hegadadevankote Taluk

is forwarded, together with its one enclosures, to the Deputy Commissioner Mysore District, for report. Requests attention to the Dewan's remarks on the Petition.

BANGALORE,
28th September 1888.

Draft

By Order,

Chief Secretary.

12/10.

Mysore Government Press, Bangalore.—7-1-88.—1,000.

From R. Canara No. 97 6-4-92.

Draft

1555

By order

Chief Secretary

For Orders

Submitted to the Chief Secretary with ref:

LR 58-88.

11/4/92.

File

1 cy

30/4

There have been two Summons issued in this suit in case 1 thereto & that of Thas eventually gone before a Civil Court & is very likely to be decided there

30/4

21/5/92

Vide draft Order

20 July

(General Serial No. 30.)

From 9/4 189

The Dy Comm: Mysore District

(3)

The Chief Secretary to the Dewan of Mysore.

Dated 6

Despatched 6 April

Received

Enclosures No. one

General No. 9

No.

Sir

I have the honour to forward herewith the petition of Ramjeejee of Heggaddevankote praying for the grant of a certain water course in dispute.

Petn Depta Mem 7/4.

Ver: Records

Please put up Memo No. 337 d/ 29/9/88 passed on Petition No. 1555 of 1888

Sir

Your most obedient Servant

M. d 9-4

C. F. THE DEWAN OF MYSORE

202

8 APR 92

P. 7

A

8-4-92

No 9 En. one.

Deputy Commissioners Office
Mysore. District,
Dated Mysore 6th April 1892

(3)

From,
A. Rangaswami Iyengar Esquire
Deputy Commissioner

To,
The Chief Secretary to the Dewan
of Mysore

Sir,

With reference to the Dewan's remarks on the petition of Rangeygar of Heggaddevan-Kote, received with your Official Memo: No 337 dated 28th September 1888, I have the honor to state that Mr. Nanjoondaiyya, who inspected the lands and "Codi" in dispute, reports that the petitioner failed to produce any documentary evidence to substantiate his assertion that Anantachar had made an admission to the Channel Department to the effect that he had a manool source of supply different from the Codi in question.

The Assistant Commissioner further states, as regards the water course of one Narasimachar of Sargur which Petitioner alleged was capable of irrigating Counter Petitioner's lands, that Sargur Narasimachar objects

to water being given to Anantachar from this Source, as the supply is hardly sufficient to irrigate his own land, and that even if it were allowed, it will be useless, as the land is on a higher level. For these reasons it is not feasible to adopt the remedy pointed out by Rangiengar.

An endorsement embodying the above details has been issued to the Petitioner.

The petition is herewith returned.

I have the honor to be,
Sir,
Your most obedt Servant,

By Commissioner,
Mysore District.

MR

Compd.
Clk.

(General Serial No. 52.)

189 (5)

No. 782

Name of Petitioner. Anantha char

Village. Lauqur

Taluk. Heggadevankote

District. Mysore.

Date of Arzi. 28-5-92

Date of Receipt 8-6-92

Date of Disposal.

No. of Enclosures.

L Q 88-89 4

ABSTRACT.

Subject
Petn praying for
early favorable
orders in his ma
Suit Instituted
between him &
Rangappa

The Dep[t]y Comrs
report recd on the
subject has been
ordered to be filed

Submitted
Chert[y]
21/7/92

The Dy Com's report on the subject — 9 C Apl 1892, No. 9 — has been ordered to be filed —

Communicated to the Chief Secretary with Refs: SR 5[illegible]

SC
19/7/92

Chief's Order on separate paper —

SC
20/7/92

(General Serial No. 52.)

1892. (7)

No. 118

Name of Petitioner. Runga Iyengar

Village.

Taluk. Heggadadevankote

District. Mysore —

Date of Arzi. 9th July 192 —

Date of Receipt.

Date of Disposal.

No. of Enclosures. Nil

ABSTRACT.

Petitioner requests that orders may be issued to the Deputy Commissioner Mysore District, directing him to inspect the lands of petitioner belonging to petitioner and report fully on the ~~encroachment~~ Waddi water dispute between himself and one Saraguru Ananthachar —

Ref: Not stated in the Abstract

Issued 20/7/92

Secretary

118 Rs.
14-7-92

ಮಾನ್ಯರೆ,

ವಿಷಯ: ಕೆಲಸಕ್ಕೆ ಅರ್ಜಿ ಸಲ್ಲಿಸುವ ಕುರಿತು

ನಾನು ಕಳೆದ ಮೂರು ವರ್ಷಗಳಿಂದ ಕಂಪ್ಯೂಟರ್ ಕೋರ್ಸ್ ಮಾಡಿದ್ದೇನೆ. ಈಗ ನಾನು ಕೆಲಸ ಹುಡುಕುತ್ತಿದ್ದೇನೆ. ನಿಮ್ಮ ಸಂಸ್ಥೆಯಲ್ಲಿ ಕೆಲಸ ಖಾಲಿ ಇದೆ ಎಂದು ತಿಳಿದು ಬಂದಿದೆ. ಆದ್ದರಿಂದ ನಾನು ಈ ಕೆಲಸಕ್ಕೆ ಅರ್ಜಿ ಸಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ. ನನ್ನ ಅರ್ಜಿಯನ್ನು ಪರಿಶೀಲಿಸಿ ಸಂದರ್ಶನಕ್ಕೆ ಕರೆಯಬೇಕಾಗಿ ವಿನಂತಿ.

ಧನ್ಯವಾದಗಳು.

ಇಂತಿ ನಿಮ್ಮ ವಿಶ್ವಾಸಿ

9.7.92

(81)

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT.

OFFICIAL MEMORANDUM.

L.R. 5-8-92.

The accompanying Petition No. 118
dated 9th July 1892 received at the
Dewan's Office from Rangachargar
of Hegga'a devanahole Kasba
requesting that the Dy.
Commr may be ordered to
report fully, ~~by personal~~
~~inspection~~, on the Waddri water
dispute between him and one
(Rating) Ananthabhar,
is forwarded, ~~together with its~~
~~enclosures~~, to the Deputy Commr
Mysore Dist for disposal.

By Order,

Chief Secretary.

BANGALORE,
July 1892

Rep Register

(General Serial No. 30.)

189

From

(9)

LR 58-88-1

Dated 20
Despatched 23 July
Received

Enclosures No.

General No. 1126
Petty No 84-92.93

Draft

MYSORE DEWAN
PETITION DEPT.
REG'D. N. 44
DATE 16 3

(General Serial No. 30.)

189 . (10)

From

The Chief Secretary to the Dewan of Mysore.

LR 5885-9

To

The Deputy Commissioner Mysore Dt

Dated 17"

Despatched 19" } May 93

Received

Enclosures No.

General No. 9275

~~*Pet. Off. No.*~~ 84-92

This Office No 1126 dated 17.84-92-93
20 July 1892 calling for a report regarding the dispute between Anantachar and Ramjenjar concerning the water of a Wadda in Ramjenjar's possession

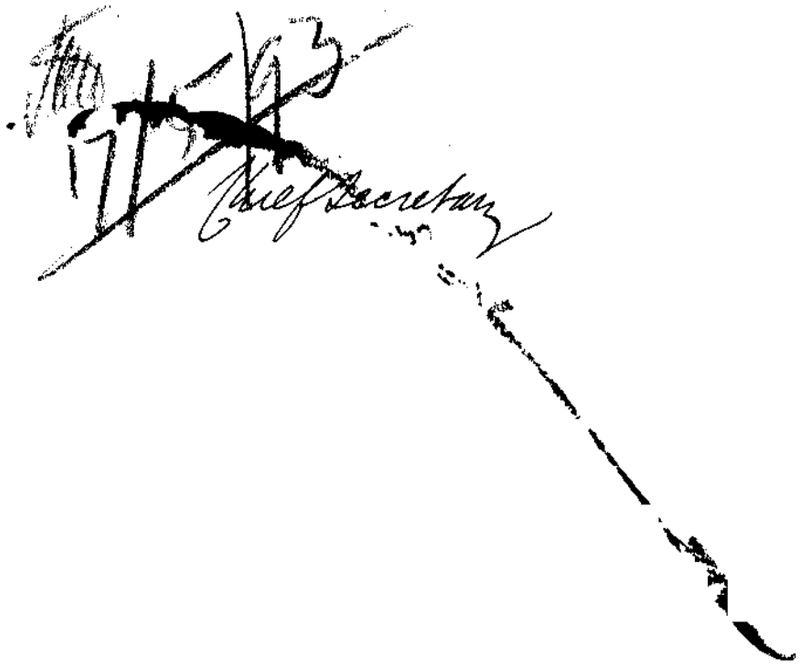
---

Invites attention to the above and requests early submission of the report called for

2. a Petition presented by Anantachar No 2401 of 13th March last complaining the authenticity of a document said to have been produced by Ramjenjar, ~~[illegible]~~ and praying that a Small Hikkale ~~[illegible]~~

may be caused to be dug up
temporarily for supplying water
to Fort Lund No 15 is forwarded
for information.

By Order



(General Serial No. 30.)

189

OFFICE OF THE DEWAN OF MYSORE
13977
15 MAR 94
Pet 625

From

The Deputy Commissioner
Mysore District

To Jr. 84-92 (11)

The Chief Secretary to the Dewan of Mysore.

Dated 18th March 1894

Despatched

Received

Enclosures No. Petition No. 249 and four files of Vernacular papers as per Margin.

General No.

No. 1000

Submitting further report on the petition from Rungiengar of Heggadadevankote, together with the vernacular papers called for.

decision
Petn 13/3/94

No Hearing necessary. I have passed a final order.
Issue
after
obtaining
J. Chelapa's
approval
as Head Chelapa
is on Deputation
VP
13/12/94

Petn 84
15/3/94

Recd 16/3/94

Submitted to the Chief Secretary with reference
16/3 Sat. for orders of
Commissioner - Perhaps a
hearing of both sides will
facilitate

No. 1000.

Ex. Petition No. 2401 and four files of Canarese papers as per list. From

DEPUTY COMMISSIONER'S OFFICE,
MYSORE DISTRICT,

Dated Mysore 10 March 1894.

(11)

A. Rungaswami Iyengar, Esquire, B.A, B.L.,
Deputy Commissioner,
Mysore District.

To

The Chief Secretary to the Dewan of Mysore,

SIR,

With reference to Government Proceedings No. 1126/84 of 20/23 July 1892 on the subject of right to water from a kudi constructed by Rungiengar in Kalé Kundi village, Hegga-dadévankoté Taluk, observing that the last order of Government on the subject was issued in 1888 on which a report was submitted four years afterwards, and calling for a report as to how matters stood and what steps were taken during that time, &c., I have the honor to report as follows:-

On the complaint of Ananta Iyar, Ranjappaji and Jois Ramasimha Iyar in 1881, praying for the supply of water to their lands from the kudi constructed by Rungiengar on the ground that it was

constructed over a Kalvé which existed there for irrigating their lands, the Government in their Proceedings No. 1943 dated 20th November 1889, held that the correspondence on the subject clearly establishes that Rungiengan's allegation that the petitioners' lands used to be irrigated by the surplus water of the adjoining fields was untrue; that the petitioners' lands should be supplied with full measure of water after taking possession of the Waddi and that Rungiengan should be informed by a written order to that effect that he should always so maintain and use the Waddi as not to diminish a full supply to the petitioners' lands and that any failure on his part in this respect would necessitate the removal of the Waddi and the restoration of the channel regarding the existence of which there was no doubt whatsoever. This was communicated through the Amildar to Rungiengan and he represented to the Amildar in his petition dated 23rd August 1888 that his case might be recommended for the re-consideration of Government

as the orders had been passed expanse without going through the papers fully. Submitting this petition, the Amildar reported that neither Rungiengar nor Ananthu Thar were willing to repair the wuddi; that if, as per Government orders, the old channel was to be restored by removing the wuddi, it would cost about 238 as the earth had to be carried to a distance beyond all the surrounding cultivated lands and that if it were carried out, it would cut off the water supply to Rungiengar's and Jois Narsimha Thar's lands. He further reported that, under the circumstances, it would be advisable to take over the wuddi under Government management and regulate the water supply in the locality recovering the cost of its annual repairs from the land-holders exempting Rungiengar from it in consideration of his having constructed the wuddi at his own cost.

× No. 559 dated 4th October 1888.

3. Meanwhile Rungiengar filed an application in the Diwan's Office for the

review of his case. It was referred to the Deputy Commissioner for further report with special reference to the Diwan's remarks on it. × Memo No. 337 dated 28.9.88.

2. After some correspondence between this Office and the Amildar, the latter referring to the memos prepared by Amildars Raghu-natha Rau and Parthasarathiengar and his report above quoted, submitted the whole correspondence to Deputy Commis-sioner Mr Ananda Rau during the cowlandi of 1889. It is reported that Mr Ananda Rau twice inspected the lands and heard the parties. But there is nothing on the record and nothing seems to have been done on the above report till Decem-ber 1889 when the records appear to have been sent to Mr Ramaswami Iyer, 3rd General Assistant Commis-sioner. He did not dispose of the matter in dispute. The records laid by till after some unimportant correspondence between this Office and the Amildar on a subsequent On 9th May 1885. On 23rd March 1888. × No. 559 of 9.10.88 No. 692 of 12.189

My conclusion was entirely in favor of Rungayya's contention in favor of leaving the water in Rungayya's possession, & of directing that Ananthayya should be mitigated & by some new & by himself to make an-other channel for new water he wanted - that a channel could have existed before the water-course appeared to some like a myth. statements in the sense of one in favor Ananthayya's land -

petition of Rungiengar. They were sent to Mr. Ranjundaraj Urs who conducted the Jamabandi of the Taluk in 1891-92. He held a local inspection and reported that the alternative ways in which water might be taken to Ananthachar's land pointed out by Rungiengar could not be resorted to, as they were objected to by the individual who owned lands above it. Accordingly endorsement was given to Rungiengar and a report submitted to Government.

5. Rungiengar again submitted a petition to this Office——— representing that Mr. Ranjundaraj Urs did not go through the records or inspect the spot a second time, as he had intended to do, and prayed that the spot might be inspected by the Deputy Commissioner personally, &c. On this, Rungiengar was informed that no order had yet been received from Government on the above report and the three sources from which he stated water could be utilized to irrigate Ananthachar's

× On 11th February 1892.

No. 646 dated 24th March 1892.

× On 27-3-92. No. 9 dated 6th April 1892.

× 6.5.92

said would be inspected during the Deputy Commissioner's next visit to the Taluk.

6. On 1st June 1892, I inspected the bunds. On 3rd June, Rungiengar again presented a petition, stating that the references in the file would clearly prove that there was no Kalve, as alleged at the place where the bunds had been constructed and also produced copy of Durkhast of 1858 by Narsia, the original holder of Ananthā Bhat's land in question as fresh evidence.

7. Meanwhile Government Proceedings, calling for further report together with the records and copies of judgments of the Civil Courts, was received and orders were issued for getting the copies of judgments which were produced by Ananthā Bhat. Ro. 1126/84 dated 20/23 July 1892. On 28th November 1892.

8. In the Durkhast of 1858 above referred to, Narsia had asked for the cultivable portion of about 5 or 6 Kūdus out of the land resigned by Mysore Sreenivasaia. Below it, there is the following:- Vide paper Ro. 7/42.43 in the Shivali.

[illegible]

[illegible]

On the Darkhast, the Sheikdar was asked to report as to whether the land was "Anadi" or "Hedsal" bunjar and what portion of it was irrigable, &c. The Sheikdar reported that the land applied for was not chadsal and that he had measured the portion pointed out by Narayan Linge Gowda out of the Anadi bunjar land and had submitted a Paimashi patti (which is not forthcoming) &c. At the top of the Darkhast, there is a shara or remark to the effect that to the extent of 4 - 7 - 4½ (k. g.) of this land as per Paimashi of Sheikdar and Shanbogue, an assessment of Rs. 4.3.8 should be fixed.

9. Meanwhile Ananthaya Shan submitted a petition to Government stating that he

doubts the truth of the statement below the Durkhast since it does not bear the signature of the Amildar or any date.

10. The writing of the Durkhast and that of the "Lawal" Jawab differ from each other. It cannot be ascertained as to who wrote the latter.

11. I again inspected the land very minutely on the morning of the 10th inst. and heard the parties for more than two hours on the 11th after carefully examining the records.

12. I have tried my best to come to a correct conclusion as to the real state of matters and I am sorry to state that I have not been able to do so with any confidence.

13. The finding of the Ranjengad Panch confirmed by the higher courts, viz: that Rungiengar filled up the existing channel and put up his buddi over it and had been giving water to Anantha Bhat and others for some years to suppress their

complaints is not quite consistent with the petitions and admissions of Anantha Ch and the previous history of Anantha Chari's land.

14. I have had no opportunity of perusing the reports of the Survey Superintendent referred to in the Dewan's order. But they cannot be considered quite accurate when it is noted that nearly $\frac{1}{3}$? of Anantha Chari's wet land and the whole of No. 22 classed as wet, have never been cultivated with wet crops.

15. The allegation of the existence of one defined channel from the main channel above No. 11 up to Anantha Chari's land for the irrigation of the latter appears improbable and that Rungiengar filled it up cannot be reconciled with the following:-

I. Anantha Chari contends that the waddi had been put up only for a small length previous to 1881, that his channel had not been tampered with at that time and that the waddi was

constructed from near the top of No. 11 to the end of No. 15 i.e. for the whole length as it now stands only in 1884 and that his supply was interrupted only then (see also his petitions of 1881 and his statement before me. Nos. * in the plaint). But the records show that the wuddi had been completed in 1874 and it must be presumed that it could not have been enlarged or improved subsequent to 1881. Since many parties had begun to complain against Rungiengar and his wuddi in the latter year, it is scarcely likely that Rungiengar would have been allowed to block up the existing channels and to raise the wuddi to the height of two feet and more as alleged by Ananthachar.

* 10 and 7 *
13-51
11-48 and 50.

II. In the complaint petition of Ramjappaji and others dated 11th February 1884 (Vide paper No. * in the list), it is alleged that Rungiengar closed a number of channels. It is therefore not likely

* 13-51
24-106

that there was a single defined channel on the side of the waddi.

3. In Ananthe Ghari's petition dated 10th October 1881, he has stated that by an amicable arrangement with Venkata Narasimha Ghar Krishniengar, the brother of his vendor, had constructed a channel in the middle of Venkata Narasimha Ghari's land but not his Tavari or Talakal on which the waddi stands. From this point the water must have been taken on the high bank situated below Venkata Narasimha Ghari's land No. 14 called Gammé gundi guddé and extending up to and even beyond the limits of No. 15. This is admitted by Ananta Ghar himself and as the level of lands Nos 12 and 13 is much higher than that of 14 and 15, the Sona Niru or surplus water from 12 and 13 and other lands above them must have been taken on this bank likewise in different channels for the irrigation of lands Nos 15 and 28 as alleged in the petitions filed by Takkadars about 1881-82. Thus there was not one defined channel as made out when the complaints assumed a definite

Vide No. 13-51 / 11-50

form, but there were different small channels.

16. Anantha Ayar admits that this bank was pretty broad and extended from above No. 14 to beyond his own land and that Rungiengar placed his waddi thereon taking earth from portions of it. When its sides were thus cut up, it is probable that the neighbouring land holders brought up their cultivation levelling the uneven ground.

17. The waddi having cut off the water-shed i.e. the flow of "Sora Kira" of the high level lands on its west to the comparatively lower level lands to the east of it, the irrigation of Nos 28 and 15 became difficult. The owners set up a claim to water from the waddi and these and the owner of Anadi Banjar No. 22 all combined to claim water from the waddi on the plea that the waddi was constructed on the mairoal Kalvé.

18 It may be questioned why they should thus shift their claims and why Rungiengar should not have exposed it. The waddi promised a more copious and regular supply of water. It was not therefore to the interest of these individuals or of the owners of the neighbouring

lands to admit the true state of things, nor did it suit Rungiengar as it would amount to an admission that his wuddi had at least partially interrupted the irrigation and he accordingly set up a different line of defence.

19. From the above it will be seen that I do not question Ananthu Ghari's allegation that his land did possess a source of irriga: tion, but my object is only to show that it was not as defined and copious in its sup: ply as he now alleges it to have been. The land had been resigned when Ananthu Ghari's predecessor in title applied for it in 1858. The original Durkhast has been pro: duced and appears to be quite genuine with the exception of the "Aaval" and "Javab" at its foot. It shows that the land was Anadi Ranjus meaning I suppose that it had never been cultivated though held on a Kandagem, and that only a portion mea: suring 7 Kolagas was capable of wet culti: vation. Wet lands in this neighbourhood appear to have been always prized and the circumstances of its resignation and the

wording of the subsequent Darkhast show that its water supply must have been very defective. The only extract from Pahani accounts, the production of which could be secured by Rangiengar show that the land was 'bunjar' in the years 1865-66 to 1868-69. Vide, No. 4 in the list.

20. Ananthu Ghar himself admitted before me that though he paid 600 Rs. and odd for 3 pieces, viz: Inaji Nos 224 and 225, now forming survey No. 9 ($\frac{A.}{2} \cdot \frac{G.}{17}$) and for the land in dispute No. 15 ($\frac{A.}{1} \cdot \frac{G.}{26}$) and that the price put upon on the latter was only Rs. 140, showing that the former was valued at about 190 Rs. per acre as against Rs. 85 per acre of the latter. Previous to the survey, its extent was only 7 and odd Kolagas wet and even now more than a third of it is unmistakably 'Anadi bunjar' (Ananthu Ghar first admitted it to be $\frac{1}{3}$? then $\frac{1}{4}$?.) and there can be no doubt that high assessed land had been added on to it during the survey measurement and that this addition also has been classed as wet without scrutiny. As wet lands are valuable here, the holders have apparently acquiesced in the increased assessment in the hope of ultimately prevailing

upon Government for supply of water to these lands.

21. It seems to me that there is not sufficient evidence for holding that Rungiengar closed up an existing Kalvé and that it is more probable that the obstruction of irrigation of Nos: 15 and 28 was gradually brought about by the construction of the waddi and by the encroachment of neighbouring land holders. As regards the waddi itself, I beg to state that it is a mud bank of 423 yards in length made up of black loose soil and is in a dilapidated condition: Without considerable outlay, it is not possible of being made water tight or capable of rendering the service required of it under the orders of the Dewan, because as alleged by Rungiengar a large portion of the water which enters the waddi, is likely to be lost by percolation by the time it comes to the end of it. Under these circumstances, it would be hard to compel him to maintain the waddi in order and to supply water for Ananthakaris lands.

22. I have examined the other sources of

water supply to land No. 15. It struck me as possible to take water from the channel between Nos. 14 and 16 even the surplus water running off from No. 14 could possibly be utilized for portions of No. 15 by lowering the level by 4 or 5 inches. If No. 15 had belonged to the owner of No. 14 or 16, we should have heard no complaint of want of water for it.

23. In conclusion, the facts of the case may be summed up thus: -

I. Arunthathi's land No. 15 had not a permanent channel nor was it entirely covered up by Kunjiengar's buddi. It used to receive an indifferent supply of water from the channel above land No. 11 and from the "Lora kiru" of lands Nos 12 and 13. This supply was interrupted by Kunjiengar's buddi and the encroachment of the owners of lands on both sides of it.

II. Out of No. 15, only 7 and odd kolagas were under wet cultivation and that too not every year.

III. Ananthan Ghar could in justice only claim from Rungiengar water sufficient for three y Kalagas and odd or 30 or 35 guntas even supposing that his version of the case is true.

IV. Rungiengar is not wholly liable for this state of things and it would be hard to compel him to maintain the waddi entirely at his cost and to supply water to Ananthan Ghar for the whole extent of his land, viz: t. 1. q. 26.

24. To put an end to this unsatisfactory and protracted litigation, I beg to make the following suggestions:-

I. That Ananthan Ghar should sell his land No. 15 to Rungiengar for Rs. 140 or 150 Ananthan Ghar refused to part with it for any price and wanted an equivalent extent of wet land in the same neighbourhood and Rungiengar refused to part with any of his lands in exchange, nor did he seem willing to pay more than 70 or 80 Rs. for it.

II. It will be better still if the Government could take up the waddi and

undertake the supply of water entitled to irrigation by it, the repairs being paid for or executed under supervision of the Revenue Department by the owners of the lands. No compensation need be paid to Rungiengar as the Government will take charge of it and supply him with water. He may, however, be excused any contribution towards the repairs in consideration of his having put up the waddi. The annual repairs should be paid for by him and others pro-rata.

III. If Rungiengar does not agree to this, we may insist upon his giving Ananthu Ghar water sufficient for the cultivation of about 30 or 35 guntas.

25. The vernacular file of papers and other references are herewith submitted as per Margin. together with Ananthu Ghar's petition received from Government.

I have the honor to be,

Sir,

Your most obdt. servant,

A Lawrence

Deputy Commissioner.
Mysore District.

Compd. Ully.

No. 2298/18
P.F. 84-92 dt. 30.5.95.
4/6.

To The Chief Engineer
in Mysore

Sir,

I am directed to forward the marginally noted papers relating to the dispute between Rangiengar of Heggadadevankote and Ananta Iyer of Saragur regarding a Wuddi constructed by the former for irrigating his lands and to request that you will be so good as to have the lands S. Nos 14, 15, ~~[illegible]~~ 26, 27 and 28 in Halekunde, Heggadadevan Kote Taluk kindly inspected by the Exec: Engineer and to obtain & submit a report as to the best way of irrigating all the lands with the least friction between the occupants of these numbers. I am further to solicit your opinion regarding the advisability of taking up the Wuddi altogether and maintaining it by Govt agency.

I have &c

Draft
(Riordan)

R.
Rev. Secy.

RR 11/6

1. Copy of Govt. order dt. 20-Nov-1857.
2. the Village map
3 printed copies of the proceedings of the Asst Court (two)
4 Judgment of the Asst Court dt. 10 March 1894
5. Dr Lewis's letter No 1000 dt. 4 May 1894
6. Copy of order herein dt. 5-8-95

(12)

4

From

To

Dated

Despatched

Received

Enclosures No.

General No.

No.

R+184-92

1895/96 (131)

MYSORE P. W. DEPARTMENT.

Camp
No. 131

From

The Chief Engineer
of Mysore.

To The Secretary to the
Government of Mysore.
Revenue department.

Camp Hmmm
Dated ~~Bangalore~~ 2d February 1896.

Despatched

Enclosure No. one ¶ one fm.

Subject.

R a 55-8-12

Sd Bdgamccllr
with reference to his
order d/30/5/95 Q.

1 By-2-96

Whilst it is true
that the parties
concerned have
thus matter is
decided -
Government will
support the
expense.
Mcd
18/2/96

HBL
19/2

Posted 4-5th March 96.
Rup

Petition Depto.
HB
5/2/96.

Rec'd 8/2
Submitted with reference to the Rev.
Sec'y
8/2

Lee Y HBL
12-2-96

Camp No. 130

MYSORE P. W. DEPARTMENT (13)

CENTRAL OFFICE,

Camp Hmmm ~~Bangalore~~, 2d February 1896.

From Colonel C. Bowen.
~~The~~ Chief Engineer of Mysore,

To The Secretary to the
Government of Mysore.
Revenue Department.

SIR.

With reference to your letter No. 22918 P.F. 84-92 of 30th May 1895, forwarding correspondence relating to the dispute between Rangiengar of Neggadadevankote and Narantachar of Sargur, regarding a "bundi" constructed by the former for irrigating his lands, and requesting to report the best way of irrigating all the lands therein referred to with the least friction between the occupants, I have the honor to forward the enclosed copy of report No. 225/24 of 16th January 1896 from the Executive Engineer, Mysore Division, on the subject. I quite agree with the opinion expressed by Mr. Karvé. —

II. — The original enclosures are returned.

I have the honor to be,
Sir,
Your most obedient Servant.

C. Bowen. Colonel.
Chief Engineer of Mysore.

EBD. pmg

No 225
24

(13/4)

From,

The Executive Engineer
Nagar Division.

To, The Chief Engineer
Bangalore.

Dated 16th January 1896.

Memo:

Chief Engineer's No. 3034 of 20th June last, forwarding in original for report, Revenue Secretary's No. 22918 P.F. 84-92 of 14th idem, calling for a report as to the best way of irrigating the lands, Survey Nos. 14, 15, 26, 27 and 28 in Halehundi, Hegga-devankote Taluk.—

On returning the above with its enclosures, has the honor to report as follows, after the undersigned's personal inspection of the lands in question:—

(1) That to irrigate Survey Nos. 26, 27 and 28, an "Addi" is necessary.—

N.B. An "Addi" exists at present but is in disorder, and undersigned understood from its owner Ranjangar, that he would repair it at his own cost as soon as the water dispute between him and Amarthachar was settled by Government.—

(2) That to irrigate Survey No. 14, no special work of any kind is needed. It is situated on a lower level than Survey Nos. 10 and 11, so, by gravitation the surplus

Ranjangar states that No. 28 is his, and that he has bought it.

Mr. Ardy mentioned in dispute is 15. extent varied 5/3/96.

a sowkar 1.26 agst 9 Ots 9cd

surplus water of those Nos flows into it. Nos 10 and 11, do not depend upon Rangaiengar's "Oddi" but receive water direct from a Sluice Channel. —

(3) That to irrigate Survey No 15, which is from 2" to 6" higher than No 14, it should be supplied with water either from Rangaiengar's "Oddi" above referred to, or lowered by 5" on an average, in which latter case, it will receive surplus water of No 14. Since Rangaiengar has been objecting to the man taking water from the "Oddi," lowering of the land will put an end to all future disputes. These lands measure 2 acres only, and its lowering by 5" is estimated to cost Rs 11 = 125 only, at 1/2 annas a Cyd:, but the owner will probably be able to do this at a less cost. —

16th January 1896.

(Signed) V. Thungaraden
for Executive Engineer
Mysore Division.

True Copy. —

C. Hoven. Colonel

Chief Engineer of Mysore —

Camp Hunsur
2d February
1896

(14).

1896

No. 3188

Name of Petitioner, Registrar

Village,

Taluk, Mysore

District,

Date of Arzi, 9th - 3 - 96

Date of Receipt, 11 - 3 - 96

Date of Disposal,

No. of Enclosure,

ABSTRACT.

Submits certain points for consideration in the disposal of this Review petition pending before the Council. English petition

HK

11/3 Register, abstract & submit today Sd/ BR 11/3

Submd.

The file was submitted to the Rev. Councillor on 5th inst.

Sd/ Councillor

11/3

Sub- for orders -

The Petr was heard & Co in the presence of the other parties - Order reserved -

There is a right of the High Court hereof in the Mankotchetty remanded to the said Dist Judge of Mysore for fresh decision on merits. S.a. 67 of 93-94 - 9 wanted to know the result of this remand whether the matter was eventually decided by Civil Ct. 9 asked for this information in my Note of 5-3-96. 9 are no reply Send the information asked for. Please see how the matter stands & submit early with the information

7.8.97

13/8/97

Write to the Registrar & the High Court (Encl) 16/8/97

3188

To One Eighteanna Court fee stamp affixed.

The Councillers of the Mysore Government
Bangalore.

Respected Sirs,

I beg respectfully to submit the following few points for your honor's Consideration in the disposal of my Review petition pending before the Council.

The petitioner obtained permission of the authorities to Construct an Addi in 1872 and completed the same about 1873-74 to take water for his lands. He purchased some site for putting up the Addi. The Counter petitioner Anantha char who was not on good terms with the petitioner purchased land No. 15 in 1881 and began to assert a claim for water from the Addi on the pretext that the Addi was put up on an old <u>mamool</u> ground Channel which, it was alleged was the source of water to land No. 15. The claim was under enquiry in the Revenue Department from 1881 to 1887 and several experienced officers could not conclude that there was a ground Channel. Although the Counter petitioner was referred

to

a civil suit in march 1885 (Ex: B in C.S no. 26 of 1888) he didnot do so until he was armed with the order of the Dewan passed in November 1887.

Unfortunately for the petitioner the Dewan's order expressed an inference from certain survey papers that there existed a ground channel in the place of the Oddi. Strengthened by this order the Counter petitioner filed a suit against petitioner for damages (C.S. no. 260 of 1888) which went against the petitioner although the order of the Dewan directed the Oddi being taken up by the sankar and treated as sankar Oddi, this direction was not carried out and the petitioner filed a petition to revise this order. The survey papers do not give any clue to show that there was any ground Channel. The Munsiff who tried the case no. 26 of 1888 was silently influenced by the order of the Dewan in arriving at his Conclusion about the existence of the ground channel although there was no direct issue about it and although the direct issues were as to the ownership of the Oddi and as to defendants' obstruction to the flow of water thereon. The Munsiff, who has observed that certain letters produced by the petitioner viz Exhibits 8, 9, 10 & 11 if true would cut at the roots of the plaintiffs' case, disposed of these documents with a remark (a surmise made in that evidence that they came into existence

after

after the dispute and he was led to make this remark on the ground that they were not produced during the Course of the Revenue Enquiry. It was shown in the appellate Court that those documents had been produced in the Revenue Enquiry, but the appellate Judge disposed them off by stating that the writers of these letters were related to the petitioner and hence that they were not reliable as being suspicious. Both the Courts imply that these letters if true falsify plaintiff's case but they have failed to observe that Ex: 11 is dated 1870 and bears the post mark and it refers to land no. 15 being desired to be resigned away owing to want of water and the subsequent letters only corroborate this fact. Taken together these letters prove the non-existence of any ground Chennel. The Chief Court did not interfere with the Concurrent findings of the two lower Courts arrived at in the light of the Dewan's order and on the strength of surmises above referred to. The petitioner had, during the Course of this Civil suit applied for a copy of the original Darkast made for land no. 15, but it was not given owing to mistaken discription.

While a review was pending in the Revenue Department, the Counter petitioner emboldened

emboldened by his success in C.S No. 260 of 1888 filed another suit No. 943 of 1891. In this case, the petitioner was able to get a copy of the original Darkast and there was a Darkast and there was a direct issue as to the existence of a ground channel and the petitioner did not omit to adduce all evidence to prove his pleas. The Munsiff, although he felt upon this evidence that the observations of the Judges in the previous case were not correct, also felt bound by them and could not undo that injustice. The matter is still pending in appeal.

To support the decisions of the Courts in the two suits and the order of the Dewan the two premises are necessary - Viz (1) that there was a ground channel (2) that the Reddi was put up thereon (3) that the ground channel existed sufficiently long as to establish the Counter petitioner's right for water therefrom. If these premises are untrue, there could be no blocking up by Reddi so as to make the petitioner liable. The petitioner's act being undertaken with Government sanction to construct the Reddi, it could not be unlawful and the Government could not have sanctioned the construction of the Reddi to the injury of the rights of others. If the Construction of the Reddi did injure

the

the rights of others, these other persons could not keep quiet from its commencement in 1892 up to 1898 when the Counter petitioner purchased land No 15.

Of the premises (1) whether there was a ground channel (2) whether the kaddi was put up thereon (3) whether plaintiff had a Congruse of the ground channel so as to entitle him to water therefrom and (4) whether petitioner is liable tortious action. if the first is not established, the others need not lee considered. Again if the Civil Courts have raised a direct issue as to the existence of the ground channel and have called for and taken all the evidence and have decided that issue upon evidence, then, although there is fresh evidence to disprove the correctness of that decision, the same issue is Res judicata and cannot lee reheard except by a Review. In any case Your honor's are not precluded from revising the whole case if injustice is apparent. Further the question of water supply to Government lands is purely a Revenue question and but for the order of the Delwar which

which in a way specified a source of water to the Counter petitioners land, the Civil Courts would not have entertained the Counter petitioners suit in the face of the order to the petitioner to Construct the Vaddi

6. Now I beg to show that there was no ground channel as alleged by the Counter petitioner because (1) the land between N.S. 15 and the source of water was a hollow and no channel could bring water to the Counter petitioners land without an embankment in the ground which was hollow (2) the Munsiff in C.S. no. 26 of 1918 states that the channel came into existence about 22 years ago, but land no. 15 had been applied for long before that period (3) the Pahani accounts those which are available - namely - for the years 1865-66 and 1868 to 69 shows land no. 15 to the Baniyer (4) the letter of 1870 from the owner of land no. 15 requests the petitioner to resign away this land and the subsequent letters confirm this statement (5) the petitioner could not have purchased a site for constructing the Vaddi and as the owners of land no. 15 were related to the petitioner and as they had left the land in his charge, the petitioner would have taken

advantage

advantage of improving the old channel for his lands also and would have requested permission of Government therefor (6) the Counter petitioner in his petition dated 1st October 1881 (Ex:4 in C.S No 26 of 1881) States that a channel had been blocked up by Venkatanarasimha-char and yet he sold a site for a new channel to the petitioner (7) the Document made by the original owner of land No 15 does not refer to the ground channel and lastly and chiefly the munsiff in C.S. No 943 of 1891 states in para 15 of his Judgment that "the existence of a ground channel was a presumed fact."

If the existence of the ground channel was presumed that is not proved as observed by the munsiff, then the matter in issue, even if it were in issue, was not heard and decided and therefor it is not Res-Judicata. That it is a presumed fact will be apparent if the evidence and not the Judgment alone in C.S No 26 of 1881 is ~~presumed~~ perused along with the evidence of the same witnesses in C.S. No 943 of 1891.

The Counter petitioner's sole contention hinges on one document J.S Gajasaby's

document

Darakast and the oral evidence of one or two witnesses. Here I beg to state that the Darakast in question in 1871 is for one garden land lying to the ~~south~~ west of No. 28, whereas the Shanbhogue's report on the back of the said Darakast alludes to 2½ kolagas of land to the South of No. 28 and not ~~for~~ that is applied for. Gayasaby stated distinctly in the said Darakast that he will get the water supply to the land from a distance of 2 or 3 furlongs. If the ground channels were then in existence naturally he would have mentioned in the Darakast, that he would get the water from the nearest channel now under ~~existence~~ contemplation. The remarks made by the Shanbhogue is mischievous, vague and cannot be relied upon as a genuine entry. On other hand some of the documents produced by me are in the handwriting of deceased persons and others are produced from lawful custody duly authenticated by responsible Government Officers.

I beg to remain
Respected Sirs
Your most obedient servant

Mysore
9th March 1896

(15)

1897

From

The Secretary to Govt
Genl & Rev depts

To

The Registrar
Chief Court.

Dated 17th

Despatched Augt/97.

Received

General No. 1878

P.J. No. 84-92

(267)

Enclosure No.

Has the honor to
request that he will be
so good as to forward
to this office, as early as practicable
a copy of the
final judgment if any
of the Chief
Court in S. Appeal No. 67 of 93-94
which was remanded by
to the District Judge
of Chingleput for fresh
decision with directions
on the 9th July 1894
and also to report
the result after the remand
and how the matter
was eventually decided
by Civil Courts.

By order

for Secretary

13/8/97

Appellt
Anantachar (appellant-plaintiff)
Vs
Ranga Iyengar (Respondent-defendant)

If the District Judge's revised
final judgment and decree were
not appealed against, a copy of the
latter will suffice

No 1033
37

Bangalore, 19th August 1897

From

The Registrar of the
Chief Court of Mysore

To.

The Secretary to the
Government of Mysore

Sir,

With reference to your No. 1828
84-92
dated 17th August 1897, requesting that a copy of the final Judgment of this Court in S. A 67 of 1893-94 remanded to the District Judge of Mysore for fresh decision on the 9th July 1894 may be forwarded, I have the honor to state that an appeal has been preferred to this Court against the fresh decree of the District Judge of Mysore and the same (C.S.A. 34 of 96-7) has been posted for hearing to 15th September 1897.

I have the honor to be,
Sir
your most obedient Servant.

M Jagannatha Iyengar
Registrar

Nilu

1897.98.

(16)

Refs put up (O.I 84. 92 Gen. 20 15)

Subsidiaries
MK
24/8/97.

MK
24/8/97

Y.
Times.

Y
The Registrar of the
1604 Chief Court of
Mysore.

Y
To.
The Secretary to the
Government of
Mysore

No 1033 dated 19 August/97.

Referring to his No 1828/84.92 dated 14 August states that an appeal has been preferred to this Court against the decree of the Subordinate Judge of Mysore & the same has been posted for hearing to 15th September 1897.

Sd/ 21/8/97
for Registrar

Subs) 2nd Council or (with ref to order on serial no 14)
The appeal against the revised decree is pending in the Chief Court.
MK 25/8/97

Rd 6.40 Pm.
25.8.97.

Mysore Chief Court
Mysore
25/8/97

Write to the Registrar calling for copy of the Judge's judgment & decree
MK 26/8/97

27/8/97

Transferred to Fr. Bench by the preference being of Hindu No
1360
23/8/97 Rec'd 24/8

Gen. 31

1897 (17)

L258-88-46

From The Secretary to Govt. Genl and Rev. Depts.

To The Registrar Chief Court, Ukyoke

Dated 28th

Despatched Augt/97

Received

General No. 2368 (341)

P. F. No 84-92

Enclosure No.

His letter No. 1033 dated 19th August 1897, stating that an appeal has been preferred to the Chief Court against the fresh decree of the Dist. Judge of Ukyoke in the matter of the Waddu water dispute between Rangaswamy of Heggadevankote and Sujan Mantha-char.

Has the honor to request that he will be so good as to forward to this office copy of the fresh judgment and decree by the Dist. Judge referred to in the above

By order

27/8/97 for Secretary

1897-98

OFFICE OF THE
13. 10

D192

From,

The Registrar of the
Chief Court, Lingsugur

2604
Pet 201

To

The Secretary to the
Govt of Mysore

Dated 12. Oct/97
Desp'd 13

No. 2478/64 Judl: two

Forwarding copy of Judgment and Decree in Appeal No. 17/82 of 1893 on the file of this Court - Ramjiengar & Anantachar

Petn 13/10/97
12/10/97

Appl 84 of 92 Asst Supt.

Submitted
14/10/97.
14/10/97

Lingsugur

The District Judge finds

(1) That the effacement of the ground-channel irrigating Anantachar's land has been found as a fact in a previous suit & the contention of the appellant that no such channel existed cannot be noticed, the matter being res judicata

(2) That Anantachar can irrigate his lands only by means of the oddi constructed by appellant & for this purpose the oddi must be kept in proper order

The drainages have been considered as the oddi was not found to be in good condition

The chief Engineer has been addressed regarding the advisability of Govt taking up the oddi & regulating the water-supply.

D of L Dy Commr
Subject
with ref to order in Appl No 16)

My 16/11/97

Robtm
18.11.97

No 3478 Section two
66

Bangalore 12th October 1897.

From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to the
Government of Mysore.

Sir,

As requested in your no. 2368 / P.F. 84-92 of the 28th August last, I have the honor to forward copy of judgment and Decree of the District Judge of Mysore in Appeal no. 17/82 of 1893, on the file of his Court.

Ranganayakamma
&
Anantachar

I have the honor to be
Sir,
your most obedient Servant

Registrar.

In the Court of the District judge, Mysore.
Dated 10th August 1896.

Present.

M. Ramaswamy Iyer Esquire, B.A + B.L.
District judge.

Appellant (Defendant) Respondent (Plaintiff)
Ranga Iyengar. vs Ananthachar

Appeal Suit No. 17/82 of 1893
against the decree of the Munsiff
of Nanjangode in O.S. No. 943 of 1891.

Judgment.

Suit for Rs. 105 by way of
damages on account of loss of
produce.

2. The plaint is as follows:—

(1) The land described in the
schedule annexed belongs to the
Plaintiff and is in his enjoy-
ment.

(2) The Defendant blocked up
the water course that was used
for irrigating the Plaintiff's land

and

and thereby caused loss of produce to him. The Plaintiff lodged a complaint against the Defendant before the Revenue authorities and succeeded in getting an order from the Dewan to the effect that the Defendant acted wrongly in obstructing the water course, and that water should be supplied as usual.

(3) In Civil Suit No. 26 of 1888 on the file of the Munsiff of Nanjanged the Plaintiff sued the Defendant for damages and obtained a decree for 2 years' produce at 7 kandies of paddy per year.

(4). Even after the decree the Defendant continued to obstruct the flow of water, in consequence of which the Plaintiff's land was lying waste during the years 1888, 1889 and 1890.

(5) Cause of action accrued in January 1889. The Plaintiff prays

judgment

judgment for the recovery of 21 kandies of paddy or the value thereof Rs. 105, with costs.

3. The Defendant filed the following written statement:—

(1) The Plaintiff has no cause of action against the Defendant.

(2) The order of the Dewan confers no right upon the Plaintiff, nor is it valid, final and binding upon the Defendant.

(3) The Plaintiff's land was never irrigated by any water course flowing through the land upon which the Defendant has built the "Uddi" prior to the construction of which the Plaintiff had lost his right if he ever had any.

(4) The suit is time barred

(5) There is no obligation express or implied either by any rule of law or agreement or custom whereby the Defendant

is

is bound to supply water to the Plaintiff's land through his "Uddi."

(6) The Defendant himself has sustained loss by the vexatious litigation of the Plaintiff.

(7) This suit is not maintainable, since the Plaintiff has not established his right to the water course, or for the removal of the "Uddi."

(8) The Plaintiff has according to the conditions of his original Darkhast, no right to any independent water course.

(9) The suit is vexatious and malicious; the amount of damages claimed is excessive.

4. The following issues were settled:—

(1) Has Plaintiff any cause of action as against the Defendant, to sue for damages?

(2) Does the order of the Dewan Sahib confer any, and what

right

right on the Plaintiff in respect of the irrigation of the Plaintiffs' land?

(3) Is the suit barred?

(4) Is the Plaintiff entitled to a supply of water to irrigate his land through Defendants' "Uddi," either by custom or by any rule of law, or agreement express or implied?

(5) Is the damage claimed excessive and to what damage is Plaintiff entitled?

(6) What is the liability of the Defendant?

(7) Can the Plaintiff maintain the suit for damages without establishing his right to the water course?

5. The Munsiff passed a decree in Plaintiffs' favor for Rs. 20/- with proportionate costs.

6. The Defendant appealed on the following grounds:-

(1) The Lower Court has erred

in

in supposing that the Judgment and Decree in the former case is in the way of making true findings in this case

(2) The Lower Court has erred in holding that the order of the Dewan is conclusive on the questions of a civil nature involved in this case, and that it confers or confirms any right to the Plaintiff.

(3) The Lower Court has erred in holding that the Plaintiff has any cause of action against the Defendant, and that the suit is not barred.

(4) The Lower Court has not properly appreciated the facts and the probabilities of the case and the decision of the Lower Court is otherwise opposed to law.

7. The Respondent filed a cross appeal in A.S. No. 82 of 1893 on the following grounds:—

That

(1) That the Munsiff is wrong in dismissing the Plaintiff's suit to the extent of Rs. 85.

(2) That the Munsiff has not properly appreciated the evidence adduced in the case.

(3) That the question of the amount of damages having been determined in a previous suit, the Munsiff erred in going into that question in this suit.

(4) That Plaintiff has shown the probable amount of produce which the land would have yielded.

8. This Court dismissed the Plaintiff's suit, but on Second Appeal the Chief Court remanded the case for a fresh decision.

9. On 12th November 1894, Mr. G. Cress the then District Judge passed the following order:—

"The Chief Court has not raised any specific points for

disposal

disposal in this case, but I gather from the judgment that the question to be considered is briefly to the effect whether the Defendant who interfered with the original mode of irrigation, and who has allowed the substituted "Oodi" to fall into disrepair — has not rendered himself liable to the Plaintiff in damages; or in other words whether the existence of the "Oodi" in its present state actually caused obstruction to the free flow of water to the Plaintiffs' land No. 15, and if so what should the Defendant have done for the removal of the obstruction so as to enable the Plaintiff to irrigate his land as heretofore. If notwithstanding the existence of the "Oodi" and its non-repair, there was no obstruction to the Plaintiff taking water to his land and

yet

yet he failed to do so, then he certainly has no right to recover damages from the Defendant.

These questions can only be properly decided by the appointment of a Commissioner who will proceed to the spot and draw up a report with regard to the following points.

(1) Does the "Aoddi" which was constructed by the Defendant in any way interfere with the irrigation of the Plaintiff's land?

(2) Was the Plaintiff accustomed to irrigate his land by means of, or notwithstanding the existence of the "Aoddi"?

(3) Has the "Aoddi" fallen into disrepair and is the flow of water to the Plaintiff's land thereby obstructed?

(4) Can the Plaintiff irrigate his land notwithstanding the nonrepair of the "Aoddi",

and

and has he wilfully neglected to do so?

A sketch plan to illustrate the report will also be prepared by the Commissioner who will submit his report by the 9th January 1895. Ramanna will be appointed Commissioner and each party will pay him Rs 15/-"

10. The Commissioner submitted the plan with his report on 11-2-95; and the case was argued twice.

11. After the case was remanded by the Chief Court my predecessor appointed a Commissioner to inspect the "Oodde" and its surroundings to prepare a plan and submit a report on the following points.

Does the "Oodde" constructed by the Defendant in any way interfere with the irrigation of the Plaintiffs' land?

Was the Plaintiff accustomed

to

to irrigate his land by means of or notwithstanding the existence of the "Oddi"?

Has the "Oddi" fallen into disrepair and is the flow of water to the Plaintiffs' land thereby obstructed?

Can the Plaintiff irrigate the land notwithstanding the non-repair of the "Oddi" and has he wilfully neglected to do so?

12. The report of the Commissioner and the plan submitted by him are filed with the record.

13. The case was argued twice before me.

14. The appellants' first contention is that inasmuch as there was no issue in the previous suit about the ground channel, the finding in that suit that there was such a channel and that he built the "Oddi" over it so as to cut off the water supply to the

Plaintiffs

Plaintiffs land is not binding on him and cannot have the effect of "Res judicata" so as to preclude him from raising that question now.

15. In that suit the Respondent who was the Plaintiff alleged as follows:—

"The land described in the schedule belongs to Plaintiff and is in his enjoyment. The Defendant blocked up the channel through which Plaintiff was getting water to his land by "Mamool," and thus caused obstruction to the supply of water for agricultural purposes thereby Plaintiff sustained loss. He complained to the Revenue officer. Thereupon the Diwan was pleased to pass an order on the 20th November 1887 to the effect that the obstruction caused by Defendant without giving water to the Plaintiffs' land was

improper-

improper and that, according to Mamool Plaintiffs' land should be irrigated."

16. The appellant who was the Defendant pleaded as follows.

The Plaintiff has no right to get water from the "oddi" of the Defendant. Defendant did not shut up the "oddi". Plaintiff did not sustain any damage by Defendant's acts. Damage claimed is excessive. Defendant prepared the "oddi" at his expense to irrigate his own lands. Defendant is not liable. Suit barred.

17. The Munsiff dismissed the suit on the question of Limitation. He held that the obstruction complained of was caused more than three years before the suit and that the suit was therefore barred under articles 37 and 38 of the II Schedule of Act 15 of 1877.

18. On Appeal the District

judge

judge was of opinion that the case fell under section 23 of the Limitation Act and that as long as the obstruction continued the Plaintiff had a good and valid cause of action and remanded the suit for a fresh decision on the merits.

19. After the remand the Munsiff inspected the land and the "Oddi" and upon the evidence passed a decree in the Plaintiffs favor.

20. This decree was affirmed both on appeal and 2nd appeal.

21. In para 3 of the judgment after remand the Munsiff states the Plaintiffs Case as follows:—

The Plaintiff alleges that his land Survey No. 15 (old No. 233) was irrigated by a Manoal channel carrying water from the sluice of the village tank, that Defendant closed the channel

by

by raising its level by making an embankment on it called "Oddi" and by directing the usual quantity of water through a channel on the said "Oddi" for irrigating his other lands below the Plaintiff's land to the prejudice of the Plaintiff.

22. In the same para a little further down he states the Defendant's case as follows:—

"The Defendant contends that there was no channel in the place where his "Oddi" stands, that the Plaintiff's land No. 15 was not irrigated by any channel, that the Plaintiffs' land was irrigated by "Loras Neeras" or surplus water from land No. 14 situate immediately to the north of No. 15 and that Defendant caused no damage to Plaintiff.

23. In the concluding portion para (7) the Munsiff in recording his finding on the 1st issue, observes that the Plaintiff having

× whose is the "Oddee" through which water flows: what right has the Plaintiff to the water by the "Oddee."

been

been found to have a right to the water of the channel and the water of the channel having been taken away on the "Oddie" the Plaintiff is entitled to use the water of the "Oddi" so long as the "Oddi" lasts.

24. From the above extracts it will be seen that as contended for by the appellant now, there was no direct or express issue about the ground channel.

25. The determination of that point was however necessary for the decision of the case and to sustain the judgment of the Munsiff.

26. It is obvious that independently of the ground channel, the Plaintiff could have no cause of action at all against the Defendant. The "Oddi" was admittedly built by the Defendant at his own expense to irrigate his lands lower down, and

the

the Plaintiff could not sustain in action of damages against him unless he could prove that he had acquired a right to the use of the "Oddi" either by prescription or by grant, a fact which he did not allege and on which he did not rely.

27. In order to grant or withhold the relief claimed by the Plaintiff, it therefore became necessary to ascertain what was the original source of water supply to the Plaintiffs' land, when and under what circumstances the "Oddi" was built and to what extent it interfered with the water supply to the Plaintiffs' land. The point cannot therefore be regarded as incidental to the decision of the main question involved in the case.

28. In order to have the effect of Res judicata, the matter in the 2nd suit must have been directly and substantially in issue in the first suit.

29. The word substantially has been interpreted to mean "in effect though not in express terms" per Lord Hardwicke in Gregory v/ Molesworth 3 A and K 625.

30. There is a general consensus of opinion that for a matter being in issue it is not necessary that it should be distinctly and specially put in issue by the pleadings. Some cases even go so far as to hold that for the identity of the matter in issue, it is not necessary that an issue should have been taken in the former suit upon the precise point which it is proposed to controvert in the subsequent

suit

suit. It is considered sufficient that that point was essential to the former judgment and every point which has been in issue even by necessary implication and which must necessarily have been decided in order to support the judgment is held concluded. (13 B. L. R. 304, 13 M. I. A. 573 and I. L. R. 11 C. S. 158.)

31. Further explanation II of section 13 of the Civil Procedure Code provides that a Defendant is bound to state all the defences available to him in one and the same suit and every such defence is deemed to be directly in issue.

32. The leading case on this point is that of Mootoo Vijaya vs Katma Nachiar 11 M. I. A. 73. Lord Westbury in delivering the judgment

of

of the Privy Council in the above case observed that "when a Plaintiff claims an estate and the Defendant being in possession resists that claim, he is bound to resist it on all the grounds that it is possible for him according to his knowledge then, to bring forward."

33. We have therefore to ascertain whether the Defendants in this case according to his knowledge was bound to affirm or deny the existence of the ground channel in the previous suit.

34. About three years before the institution of that suit the Plaintiff complained to the Revenue authorities that the Defendants' "Oddi" had cut off the water supply to his land. After a protracted

enquiry

enquiry and correspondence which lasted above two years the Government passed an order to the following effect:—

"The Survey classification record and the Superintendent's report above read clearly establish that Rangiengar's allegation that lands Nos. 14, 15 and 28 used to be irrigated by the surplus water of adjoining fields, is palpably untrue. These lands are proved to have been irrigated by channel from the river and to have enjoyed at the time of the Survey classification, better water supply than Rangiengar's Nos. 26 and 27. Under such circumstances the Amildar must be instructed to restore to Lands Nos. 14, 15 and 28 the full measure of their old supply of

water

water taking possession of Rungiengar's "Ooddi" for this purpose. Rungiengar must be informed by a written order that he must always so maintain and use this Ooddi as not to diminish the full supply to Lands Nos. 14, 15 and 28 and any failure on his part in this respect will necessitate the removal of the "Ooddi" and the restoration of the old channel regarding whose existence there is now no doubt whatever."

35. The Defendant must therefore be presumed to have known the nature and grounds of the Plaintiffs' complaint against him. He must have known that the Plaintiffs relied upon the existence and effacement of a ground channel in support of his

case

case.

36. If the Plaintiff had claimed a right to take water over the "Oddi," there is no reason to doubt that he would have stated so in his plaint in the previous suit. There is not a word about it in the plaint and there was no reason for the Defendant to misunderstand the plaint or mistake the mamool channel therein referred to, for his "Oddi".

37. I am therefore of opinion that the Defendant was bound to state his present defence then and not having done so he is precluded from raising it now.

38. We have however the Munsiff's statement of the pleadings in the judgment after remand, which shows that the Defendant expressly

contended

contended that there was no channel, that it did not irrigate Plaintiffs land and that the latter was irrigated by the surplus water of the adjoining fields. Consequently I fail to understand how the Defendant can contend now that the point was not in issue in the previous suit and that the finding therein is not binding on him.

39. The existence of the ground channel was not assumed in the previous suit. On the contrary it was expressly alleged and decided in the Plaintiffs' favor.

40. The Plaintiffs suit having related to the ground channel and its closure a conclusion adverse to the Defendant having been arrived

at

at by all the Courts he is es-
topped from agitating that
question again.

41. The appellants next
contention is that the suit is
barred by limitation.

42. On this point we
are concluded by the decision
of the Chief Court in Miscel-
laneous appeal No. 34 of 1889.

43. The Chief Court ruled
that as the obstruction com-
plained of was continuous
there was a continuing injury
and the Plaintiff's cause of
action was renewed from day
to day and the claim was saved
by the express provision of
section 23 of the Limitation
Act.

44. The appellants Ad-
vocate further contends that
the Respondent must be

taken

taken to have acquiesced in the obstruction inasmuch as he did not sue for the removal of the "Oodee" and the restoration of the old channel.

45. I do not think that he was bound to sue for the removal of the "Oddi" or the restoration of the old channel. All that he wanted was the usual water supply to his land. It was of no consequence to him how he got it whether through the old channel or over the Defendant's "Oddi." The order of the Government quoted in para 34, directed that the Defendant should always maintain and use the "Oddi" so as not to diminish the full supply to the Plaintiff's land and in case he failed to do so, the "Oddi" would be

removed

removed and the old channel restored.

46. The decree in the previous suit also awarded the same or similar rights to the Plaintiff over the Defendants' "Oddi" and imposed the same or similar obligations on the Defendant with regard to its maintenance.

47. I am not therefore prepared to go so far as to hold that the Plaintiff has acquiesced in the existence of the "Oddi" and therefore in the obstruction of which he still complains.

48. A further contention of the appellant is that as soon as the Government passed the above orders on the Plaintiffs' complaint, he ceased to have any control over the "Oddi" and as the

"Oddi

"Aoddi" is in the same condition in which it was when the said order was passed, he is not responsible for any damage caused or sustained by the Plaintiff.

49. He admits in his deposition as the Plaintiffs 1st witness in this suit that the "Aoddi" is out of repair, that it is leaky and silted up and that it has also slided away and says that his own lands are also lying waste. This assertion is however false. The report of the Commissioner shows that he has dug a channel as marked in the plan by the side of the "Aoddi" in which he takes water to his lands. He also admits that he has dug the channel, but states that he did so not with the intention of neglecting the "Aoddi" or of disobeying the order

of

of the Government, but under the bona fide impression that the Government would take possession of the "Oddi" and make proper arrangements for the distribution of water not only to his own lands but also to those of the Plaintiff. I cannot however look upon his conduct in this light.

50. Even under the decree of the previous suit the Defendant is bound to keep the "Oddi" in good and proper condition, because the Plaintiff is entitled to use the "Oddi" for irrigating his land so long as the "Oddi" lasts. The Defendant is a wrong doer. He blocked up the channel through which water was flowing to the Plaintiff's land and in order to irrigate his own lands lower down he erected the "Oddi" over it and did not allow may flatly refused to allow the Plaintiff

to make use of it. To say that such a man is not bound to maintain the "Oodi" in a condition fit for irrigation is an argument that does not commend itself to me.

51. We have now to consider the several points set down for determination in the light of the Commissioner's report and the evidence adduced in the Case.

52. The Defendant being concluded by the finding in the previous suit as to the existence and effacement of the ground channel and the erection of the "Oodi" over it and the Plaintiffs right to use the "Oodi" having also been established, so long as the "Oodi" lasts, the "Oodi" must be regarded as an obstruction if it is not in a fit and proper condition for irrigating the Plaintiffs' land. I have

already

already stated that according to the order of the Government and the decree in the previous suit, the Defendant is bound to maintain the "Ooddi" at his own expense, and that he is not absolved from liability in this respect on account of his passiveness under the erroneous but not bona fide impression that the Government would take possession of the "Ooddi" and regulate the water supply of all the lands which were being irrigated by the old channel.

53. As regards the 2nd point the evidence shows that for two or three years after the construction of the "Ooddi" the Plaintiff cultivated his land with its help and that since then owing to the obstruction of the Defendant and the litigation both here and on the Revenue side the land is lying waste, and

that

that ever since the construction of the "Oddi" the Plaintiff adopted no other means for the cultivation of his land.

54. Regarding the present condition of the "Oddi," we have the Defendant's own admission that it is leaky and silted up. The Commissioner who inspected it observes that instead of being a water course, it has become a foot-path. I am therefore of opinion that it is entirely unfit for irrigating the Plaintiff's land.

55 On the 4 $\frac{th}{a}$ point the Commissioner states that the Plaintiff can irrigate his land notwithstanding the present condition of the "Oddi," by digging a channel over it or by fixing a pipe in the "Oddi" so as to draw water from the channel newly dug by the Defendant close to the "Oddi" although by so doing the

Plaintiff

Plaintiff may render the "oddi" quite useless for irrigating the Defendant's land. I am of opinion that the Plaintiff could not interfere with the "oddi" in any manner without the permission of the Government or the consent of the Defendant. The attitude of the Defendant throughout has been hostile to him and when the Defendant himself who built the "oddi" for irrigating his own land did not interfere with it, much less can we expect the Plaintiff to do so. In the face of the Government order and the decree in the previous suit, I am of opinion that the Plaintiff was not bound to have recourse to other resources for the irrigation or cultivation of the land. The Plaintiff applied to the

Government

Government for permission to dig a channel over the "oddi" but no orders were passed on his application either withholding or granting the permission. It is obvious that the Plaintiff has no other source of water supply to his land except the "oddi" and the latter being unfit for use, how can he be expected to cultivate his land.

56. For all these reasons I am of opinion that the Defendants' appeal is not entitled to succeed and accordingly direct that it be dismissed with Costs.

57. As regards the Plaintiffs' memo of objections which relate chiefly to the quantum of damage awarded by the Munsiff considering all the circumstances of the case and particularly the nature

and

and scope of the litigation, I am not disposed to interfere with the Munsiff's decree. The objections will be accordingly dismissed.

58. The Plaintiff did not press his objections to the Commissioner's report and the plan; and the objection being too general and vague is entitled to no consideration.

10th August '96
Mysore.

(Signed) M. Ramaswamy Iyer.
District Judge.

Copy.

Asst. Registrar.

In the Court of the District judge at Mysore.

~~IN THE CHIEF COURT OF MYSORE AT BANGALORE.~~

Decree of Appellate Court.
Section 579 C. P. C.
Form No. 48, Civil.

~~Present,~~

Second Appeal No. 67 of 1893-94

Appeal No. 17/92 of 1893-94.

Rangiengar, son of Venkata Rangiengar residing at Heggadadevanakote

Appellant.

Vs.

Ananthachar son of Kuttiengar resident of Saragur Heggadadevanakote Taluk.

Respodent.

Appeal from the decree of the Court of the Munsiff of Nanjangud dated the 29th day of September 1892.

MEMORANDUM OF APPEAL.

Ananthachar — *Plaintiff*

Vs.

Rangiengar — *Defendant.*

APPELLANT —

the District judge,

above named appeals to the ~~Chief Court~~ of Mysore against the decree of the Munsiff of Nanjangud in Suit No. 943 of 1891—9 dated the 29th day of September 1892, for the following reasons, namely :—

1. The Lower Court has erred in supposing that the judgment and decree in the former case is in the way of making true findings in this case.

2. The Lower Court has erred in holding that the order of the Dewan is conclusive on the questions of a civil nature involved in this case, and that it confers or confirms any right to the Plaintiff.

3. The Lower Court has erred in holding that the Plaintiff has any cause of action against the Defendant, and that the suit is not barred.

4. The Lower Court has not properly appreciated the facts and the probabilities of the case and the decision of the Lower Court is otherwise opposed to law.

~~On the passing of Judgment in this Appeal in the presence of~~ after hearing

Mr. M. C. Narasimiengar —— Advocate for the Appellant, and

Mr. M. C. Rangiengar —— Advocate for the Respondent.

It is ordered and decreed that the appeal as well as the memo of objections be and the same are hereby dismissed.

And it is further orderd and decreed that the Appellant (Defendant) aforesaid do pay to the Respondent (Plaintiff) aforesaid the sum of Rupees 81-5-4/0 being the amount of costs incurred by the Respondent aforesaid in this Court ~~with interest thereon at 6 per cent per annum from this date until the date of realisation.~~

And it is further ordered and decreed that the ——— aforesaid do pay to the ——— aforesaid the sum of Rupees ——— being the amount of costs incurred in the lower —— Court with interest thereon at 6 per cent per annum from the date of the decree of the said lower Court to the date of realization.

Given under ~~my~~ hand and the seal of the Court this 10th day of August 1896.

(Signed) M. Ramaswamy Iyer.

District Judge

MEMORANDUM OF COSTS INCURRED IN THIS APPEAL.

	By the Appellant, (Defendant)			By the Respondent, (Plaintiff)		
	Rs.	A.	P.	Rs.	A.	P.
Costs incurred in the Chief Court ...	18	-	-	29	-	2
Court Fee on Memo of Appeal	1	8	-	6	12	-
„ Power of Attorney	-	8	-	-	8	
„ Processes	1	-	-	2	-	-
„ Copies of Decree and Judgment ...	1	8	-	1	8	-
Advocate's Fee	16	-	-	16	-	-
Costs of adjournment	-	-	-	-	-	-
Fees for copying or translating	4	9	6	16	12	8
~~Printing charge~~ Commissioner's Fee	15	-	-	15	-	-
~~Costs on Remand~~ Other stamps	-	1	-	-	9	-
Total Rs	58	2	6	88	1	10

ಕೈ ಪ್ಪಾಲ್- ಹೆಸರು ಬಿಡಿಸಿಕೊಂಡಿಲ್ಲ ಕಾರಣ ಪ್ರತಿವಾದಿಯವರಿಂದ ಕೋರ್ಟ್ ಫೀಸು ವಸೂಲು ಮಾಡಲಾಗಿಲ್ಲ.

23- ತಪ್ಪಿದ್ದು

ಶ್ರೀಮಂತ ಪ್ರತಿವಾದಿಯವರಿಂದ ಕೋರ್ಟ್ ಫೀಸು ವಸೂಲು ಮಾಡಿಲ್ಲ ಕಾರಣ ಪ್ರತಿವಾದಿಯವರು ಬಡವರು ಎಂದು ಅರ್ಜಿ ಕೊಟ್ಟಿದ್ದರಿಂದ ಅವರಿಗೆ 15 ರೂಪಾಯಿ ಕೋರ್ಟ್ ಫೀಸು ಮಾಫಿ ಮಾಡಿರುವುದರಿಂದ ಕೋರ್ಟ್ ಫೀಸು ವಸೂಲು ಮಾಡಿಲ್ಲ.

ಒಟ್ಟಾರೆ ಕೋರ್ಟ್ ಫೀಸು ಬಾಕಿ ಇರುವುದು ರೂ. 0—9—0 ಮಾತ್ರ 9—9—0

/Initialled/ M. R.

District Judge.

Copy.

Registrar

Advocate for Appellant.

Advocate for Respondent.

Central Jail Press, Bangalore.—26-11-95—2,002.

The Respondent filed a cross-appeal in A. S. No. 82 of 1893 on the following grounds:—

I That the Munsiff is wrong in dismissing the Plaintiffs' suit to the extent of Rs 85.

II That the Munsiff has not properly appreciated the evidence adduced in the case.

III That the question of the amount of damages having been determined in a previous suit the Munsiff erred in going into that question in this suit.

IV That Plaintiff has shown the probable amount of produce which the land would have yielded.

D. no. (19)

No. 4096 / P.784-92 & 6.11.97

(592)

To The Chief Engineer
Mysore

Sir,

Refering to this office letter No. 22918 / P.784-92 dt. 30/5/95 and to your letter in reply (Camp No. 1315 dt. 4/2/96) reporting on the best way of supplying the Canals belonging to Anantacher of Hakkundi Heggadder cutkoli-taluk, I am directed to point out to you that the letter dt. 30/5/95 has not yet received a reply. You have not favoured this office with your opinion regarding the advisability of taking up the Work

altogether + maintaining
HLS SM agency. And
to request - that you
be so good as to supply
the omission

Yours

MKC

(20) 1897

RR 55-88-19

From The Secretary to Govt Govt and Rev Depts

To The Registrar Chief Court

Dated 21st Decr 97

Despatched 22

Received

General No. 55-89 P.

P.Z. No. 8492

Enclosure No.

His letter No 1033 dated 19th August 1897. Intimating that an appeal had been preferred to the Chief Court against the Decree of the Judge of Myeme in appeal No 17 of 1893 on the file of the court of the Dy Judge, and that the same had been posted for hearing before the Chief Court, to 15th September 1897

With reference to the above, have the honor to request that he will be good enough to forward

~~Enclosed~~ for the information of Govt. a copy of the final judgment of the Chief Court in the case ~~between~~ disposed of

By order

C. [illegible]

for Secretary

18/12/97

N 3888/111 Re: one

Bangalore, 6th January 1898.

From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to the
Government of Mysore.

Sir,

With reference to your No. 5584/P.F. 84-92 dated 21st December 1897, I am directed to forward, for the information of Government, copy of judgment in Second Appeal No. 37 of 1896-97 on the file of this Court.

I have the honor to be,
Sir,
Your most obedient Servant,

Dy: Registrar.

mjw

In the Chief Court of Mysore at Bangalore

Monday the 1st day of November 1897.

Present

Hon'ble Justice J.W. Best, Chief Judge

and

Hon'ble Justice A. Ramachandra Iyar, Judge

Second appeal No: 37 of 1896-97

Rangiengar --- appellant (Plaintiff)

~~V/~~

Ananthachar -- Respondent (Defendant)

Second appeal against the decree of the District Judge of Mysore in appeal No: 17/82 of 1893, confirming the decree of the Court of the Munsiff of Hanjangud in O.S. No: 943 of 1891.

This second appeal coming on for hearing this day, the Court delivered the following

Judgment

It was decided in the former suit that Plaintiff was entitled

to

to water for his land no: 15, and that so long as Defendant kept up the oddi he must keep it in such a condition as not to obstruct the flow of water. The right of Plaintiff to the water is therefore res judicata. It is now found by both the courts below that the flow of water to Plaintiff's land in question has been obstructed. This is sufficient to justify the decree. It is unnecessary for us to consider whether Defendant is bound to keep up the Oddi. It is sufficient to say, that he cannot be allowed to cut off the supply of water from Plaintiffs' field no: 15

This appeal is dismissed with costs.

A true copy

Registrar

mm

1897-98

The refs are wrong

There is a obj to the about Ramanjam (the appellant in this case) in the Br. branch. Put this with that file & submit. The ref quoted by the Regr will trace the file

15/1/98.

O 784 792 relating to Ramanjam is put up.

AK
16/1/98.

Submitted.

The further reports from the Chief Engineer has not yet been received

A draft letter calling for it is put up.

17-1-98

19/1/98

5799 2081
8 [illegible] 357

From, The Registrar of the Chief Court, Mysore

To

The Secretary to the Govt. of Mysore.

Dated 6th Jany/98

Despt. 7th —

No. 3888/111 Mr: one

Forwards for the information of Govt. copy of Judgment in second Appeal No. 377/1896-97 on the file of this Court.

Refers to P.T. No.

8/1/98

Transferred to Pol. Branch as the reference quoted in this relates to that Br.

8/1/98

16/1/98

Note regarding Judgt of Chief Court is put up.

AK
11/1/98.

Submitted

4/1/98

22

1898

L.R. 5-8-98/21

From

The Secretary to Govt.
Land and Rev. Depts.

To

The Chief Engineer
in Mysore

Dated
Despatched No. 6754. P. dated 26.1.98
Received P.384-92 25 (889)
General No.
No.

Enclosure No.

Sir,

Referring to this office letter No. 4096 dated 6.11.97, P.384-92 I have the honour to request you to be so good as to favour Govt. with your opinion, called for therein, regarding the advisability of taking up the Waddin abandoned tank altogether and maintaining it by Govt. agency.

I have &c.

for Secretary

17.1.98

(23)

No. 1532

MYSORE P. W. DEPARTMENT,
CENTRAL OFFICE,

Bangalore, 15th March 1898.

From

LR 58-88-2

The Chief Engineer of Mysore,

Bangalore.

To The Secretary to the Government of Mysore
General and Revenue Departments

Bangalore

Sir,

Adverting to correspondence ending with your letter No. 6754 / Rd. No. 84-92 dated 20th January 1898, I have the honor to forward, in original, letter No. 97 of the 24th February 1898 from the Executive Engineer, Mysore Division, and its enclosures, reporting that it is not advisable to take up the Wadiar under question, for maintenance by Government Agency.

II. In my opinion also it would certainly not be advisable for Government to take over the management or the maintenance of this small insignificant Nikdab channel.

III. From the Memo submitted with Executive Engineer's letter referred to above, it would appear to me that Ananthachar's objections to taking

Sir

his receipt from a sepoy to be given him to pass water under Runga Iyengar's Sikkab bund, are unreasonable, so long as the sepoy to be given is of a sufficiently large size to properly irrigate his land.

I have the honor to be,
Sir,
Your most obedient Servant
W. McClelland
Offg. Chief Engineer of
Seringapatam C. D.

wm

6721

1898.

MYSORE P. W. DEPARTMENT.

No. 1532.

From

The Chief Engineer
of Mysore.

To ~~The Secretary to Government~~
General & Revenue Depts

Dated Bangalore 15th March 1898.

Despatched

Enclosures No. 7.

SUBJECT.

~~Forwarding Mysore Dy Executive~~ Engineer's letter with its enclosures ~~stating that it is not advisable to~~ maintain the Weddoo by Govt agency. ——

——"——

All the materials necessary for a decision in this case have now been received

The question in this case is What is the best mode of irrigating S no 15 of Kalkunde in Heggadevankote taluk and in the possession of Govinda Ananta Char, respondent.

In Govt order no 1943 S 20th Nov 1897, Govt decided that S nos 14, 15 & 28 were entitled to be irrigated from the "oddi" constructed by Ramgowda, the applt

In December 1888 Ramgowda applied for a review alleging that there were other sources of irrigation for S no 15 (S no 25 has since been bought by Ramgowda) & that no difficulty about water. The Dy Comr who was asked to report, stated that there was no other source of irrigation for S no 15 & recommended the taking up of the oddi by Govt & the regulation by Govt of the supply of water to all lands under the oddi of this was impossible, that Ramgowda sh? be called upon to supply water to Govt 35 gunthas out of S no 15 (measuring 1 acre 26 gunthas assessed Rs 9-9-")

Mr Shantaal Rao drafted an order declining to "reopen the question of the right of water which the holder of S no 15 has from the oddi"

further notes are not forthcoming

13/12/20

Rev Refer
17.3.98

Subd
Previous correspondence on the subject relates to Petn Branch.
Mss to be transferred to that Branch
19/3

Attd transfer & Petn Br
19/3/98

Mysore Govt. C. Press, Bangalore.—12-9-93.—2,000.

Rev 22/3. Ref no 2 relating to the subject in dispute

AK 22/3/98

Subd 24/3/98

(2½)

Proceedings of the Court of Mysore

Q 25888-23

Read:-

1. Petition No 1555 dated 21-9-88 and the subsequent petns of Rangiengar of Heggadadevankote Taluk, praying for revision of Court order No 1943 dated 20th November 1887, deciding that S. Nos 14 and 15 and 28 in the village of Halehundi in the Heggadadevankote Taluk, were entitled to be irrigated from the "addi" constructed by Rangiengar.

2. Letter No 1000 dated 10th March 1896, from the Dy Comr, Mysore Dt.

3. Correspondence ending with letter No 1532 dated 15.3.98, from the Chief Engineer in Mysore which shows the facts of the case to be as follows:-

1) In their order dated 20th November 1887 No. 1940, Court decided that water should be supplied to fields Nos. 14, 15 and 28 in the village of Hulehundi, Haggadadevanpete Taluk, from the Addi constructed by Rangiengar as it was proved that by constructing the Addi Rangiengar obstructed flow of water to the fields above named by an old channel which had existed. Subsequently a certain Thimmachar, the holder of S. No. 15 brought a suit against Rangiengar for damages caused by the obstruction during 1885, 1886 and 1887 and obtained a decree in his favour. In this decree the Munsiff who went into the case thoroughly held that there was an old channel which Rangiengar blocked up by the Addi this decree was confirmed in appeal in 1891.

2) In 1888, Rangiengar presented

a petition to Govt stating that Ananthacharlu holder of S. No 15 had other sources of supply of water, but instead of utilising such supply, was isolated, through spite, upon taking water from his addi. On this the Govt remarked that if such sources exist the Govt have a right to use such them (holders of Nos 14, 15 and 28) with as the whole right of regulating the distribution of water vests in Revenue officers" and directed the by Collr to make the most satisfactory distribution possible so as to ensure to every Govt land a water supply not inferior to what it now enjoys, if Ranganayaka's representations be true and to report the same to Govt

Govt in view to the orders issued in 1887 being modified. In 1892, the Dy. Comr reported that Rangiengan failed to substantiate his statements, and that there was no other source of supply available to Nos 14, 15 and 28 and the report was simply ordered to be filed. Rangiengan again petitioned in July 1892 and the petn was referred to the Dy Comr for report, and the letter read above is in reply.

3) The Dy Comr now states that from his enquiries and inspection of the land, it does not appear that Rangiengan obstructed any permanent channel which led water to S. No 15, but that the bedding raised by him did obstruct an indifferent supply of waste water which No 15 used to receive from the

lands alone, enough only to irrigate 7 and odd kolagas, but not the whole No. the area of which is 1 acre and 26 gunthas, and that under the circumstances it would be hard to compel Rangiengar to maintain the eddi entirely at his cost and supply water to the whole area of No. 15. He therefore proposes that Government should take up Rangiengar's eddi, maintain it and regulate the supply of water to all lands under it, levying the cost of maintenance from all the owners of lands benefited thereby. If this could not be done, he recommends that Rangiengar should be called upon to supply water to No. 15 enough to irrigate $\frac{35}{40}$ ths of an acre. He does not think that there is any other source of supply possible

possible.

4) The chief Engineer to whom the Dy Comrs letter was referred for opinion, considers that it would be inadvisable for Govt to take over the maintenance of this small "addi". He agrees in the opinion of the Executive Engineer that the best way of irrigating S. No. 15 is by a pipe to be drawn from the channel irrigating S. No. 28 and to be put by Rangrejas at his cost and that Manikchand's objections to this course are unreasonable so long as the pipe is sufficient to irrigate his land. P

Order thereon No. 10636-7 / P.784-92 6.5.98

(367)

Govt are inclined to agree with the Executive Engineer and to punish upon Rangrejas's putting a pipe of 5 inches and digging

a petition to Court stating that Ananthachar the holder of S. No. 18 had other sources of supply of water, but instead of utilising such supply, was isolated through spite, upon taking water from his addi. On this the Court remarked that if such sources existed the Court have a right to restrict them (holders of Nos. 14, 15 and 28) with as the whole right of regulating the distribution of water rest in Revenue officers", and directed the Dy Comr to make the most satisfactory distribution possible so as to ensure to every Govt land a water supply not inferior to what it now enjoys, if Rangaiyar's representation be true and to report the same to Court

Govt in view to the orders
issued in 1887 being mo-
-dified. In 1892, the Dy.
Comr reported that in
Rangiengan failed to
substantiate his state-
ments, and that there
was no other source of
supply available to Nos.
14, 15 and 28 and the report
was simply ordered to be
filed. Rangiengan again
petitioned in July 1892 and
the petn was referred to
the Dy Comr for report, and
the letter read above is in
reply.

3) The Dy Comr now
states that from his en-
quiries and inspection
of the land, it does not
appear that Rangiengan
obstructed any permanent
channel which led water
to S. No. 15, but that the bodi
raised by him did obstruct
an indifferent supply of
waste water which No. 15
used to receive from the

digging a channel to
irrigate the whole extent of
S. No 15. Mauthia
-char should submit
to this arrangement
so long as his land S. No
15 is adequately irriga
-ted. As soon as this
arrangement is comple
-ted and comes into
force Mauthiachar will
have no further right
to interfere with the Odds
of Rangiengar. The Dy.
Collr will in consulta
-tion with the Executive
Engineer report the com
-pletion of this arrangement

C.
25.4.98

for Secretary

Sd.

1. The Dy. Collr, Mymensingh
with records.
2. The Executive Engineer
Mymensingh with the
Records received with his
letter No 1592 dated 15.3.98.

+ Rd 28.4.98
7-5-98

Noted
M.A. 11-5-98

7-5-98

ಇದರಿಂದ ತಿಳಿಸಲಾಗಿದೆ ಏನೆಂದರೆ
ಮಂಜೂರಾತಿ ಪತ್ರದಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತುಗಳಂತೆ
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ 15 ದಿವಸಗಳ
ಒಳಗಾಗಿ ~~ಮಂಜೂರಾತಿಯಲ್ಲಿ~~ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತು
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿಕೊಳ್ಳಬೇಕು. ಅಥವಾ
ಮೇಲ್ಕಂಡ ಪತ್ರದಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತು
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿರುವ ಬಗ್ಗೆ ಸೂಕ್ತ
ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸಬೇಕು. ತಪ್ಪಿದಲ್ಲಿ ಈ
ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಲಾಗುವುದು
ಎಂದು ತಿಳಿಸಿದೆ. ಆದರೂ ಸಂಬಂಧಪಟ್ಟ
ಅರ್ಜಿದಾರರಿಗೆ ಪತ್ರ ವ್ಯವಹಾರ
ಮಾಡಿದ್ದರೂ ಸಹ ಇದುವರೆಗೂ ಯಾವುದೇ
ಪ್ರತಿಕ್ರಿಯೆ ಬಂದಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ
ಮೇಲ್ಕಂಡ ಪತ್ರದಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತು
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿರುವ ಬಗ್ಗೆ ಸೂಕ್ತ
ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸಲು ಕೋರಿದೆ.

ದಿನಾಂಕ 4.98 ಸಹಿ/- ಕ್ಷೇತ್ರ ಅಧಿಕಾರಿ

By Order

For Secretary

ಇದರಿಂದ ತಿಳಿಸಲಾಗಿದೆ ಏನೆಂದರೆ
ಮಂಜೂರಾತಿ ಪತ್ರದಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತುಗಳಂತೆ
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ
ಮೇಲ್ಕಂಡ ಪತ್ರದಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತು
ನಿಬಂಧನೆಗಳನ್ನು ಪೂರೈಸಿರುವ ಬಗ್ಗೆ ಸೂಕ್ತ
ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸಲು ಕೋರಿದೆ.

ದಿನಾಂಕ -4.98 ಸಹಿ/- ಕ್ಷೇತ್ರ ಅಧಿಕಾರಿ

By Order.

For Secretary

Blm
28/4

2-6-98